[1904] 2 Ch. 767; *In re Randell*, 38 Ch. D. 213. If there are unpaid legatees the trust might well be held to result to them. The Rule against Perpetuities does not apply here because the resulting trust is a vested interest. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., §§ 327 a, 603 i. But where the charitable trust is in perpetuity, a gift over, even to the residuary legatees, is void. *In re Bowen*, [1893] 2 Ch. 491. See GRAY, *op. cit.* §§ 603–603 i. The gift in the principal case was clearly in perpetuity Though there was no gift over, it seems inconsistent for the court to declare a resulting trust in favor of the unpaid legatees when it would hold an express gift over to them void. A resulting trust, whether rightly or wrongly, is allowed in favor of the testatrix's heirs or next of kin. *Jenkins* v. *Jenkins University*, 17 Wash. 160, 49 Pac. 247. See *Hopkins* v. *Grimshaw*, *supra*, at 355. See GRAY, *op. cit.*, §§ 327 a, 603 a–603 i. But it is against the spirit of the rule to widen the class to whom the trust may result.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — REFUSAL TO RETRACT AND CONDITIONAL PRIVILEGE. — The defendant published a partially erroneous article, criticizing chiropractors, who brought an action therefor. Malice was not proved. *Held*, that judgment be entered for the defendant. It was suggested that a refusal to retract might have changed the result. *Palmer School* v. *Edmonton*, 61 D. L. R. 93 (Alta. Sup. Ct.).

For a discussion of the suggestion, see NOTES, *supra*, p. 867.

LIENS — ATTORNEY'S LIEN — COMPELLING DISCHARGED ATTORNEY TO GIVE UP PAPERS TEMPORARILY. — A solicitor, who through no fault of his own was discharged from his employment in an action for the dissolution of a partnership, claimed a lien on certain partnership papers in his hands. His former employer sought to compel the solicitor to turn them over to his successor. *Held*, that he must do so, "subject to the lien," the papers to be returned after use. *Dessau* v. *Peters, Rushton & Co.*, [1922] 1 Ch. 1.

A trustee in bankruptcy desired the bankrupt's charter and minute book, held by the bankrupt's solicitor under claim of lien, and prayed that the solicitor be compelled to give them up, subject to the lien, and to be returned after use. *Held*, that the prayer be granted. *Re Andrew Motherwell, Ltd.*, 21 Ont. W. N. 108 (High Ct. Div.).

Usually a lien need not be surrendered until the debt for which it is security is discharged. *Davis* v. *Davis*, 90 Fed. 791 (Circ. Ct., D. Mass.); *In re Faithfull*, L. R. 6 Eq. 325; *Lord* v. *Wormleighton*, 1 Jac. 580. *Cf. Matter of Hollins*, 197 N. Y. 361, 90 N. E. 997; *Leszynsky* v. *Merritt*, 9 Fed. 688 (S. D. N. Y.); *Cunningham* v. *Widing*, 5 Abb. Pr. (N. Y.) 413. See 1 JONES, LIENS, 3 ed., §§ 113, 122 a, 135, 136. But where the papers upon which a solicitor claims a lien are needed to facilitate adjudication of the rights of third persons, as in administration and winding-up proceedings, the English courts subordinate the solicitor's rights to the interests of third-party litigants and compel him to release his lien temporarily. *In re Hawkes*, [1898] 2 Ch. 1; *In re Boughton*, 23 Ch. D. 169; *Belaney* v. *Ffrench*, L. R. 8 Ch. 918. *Cf. Newington Local Board* v. *Eldridge*, 12 Ch. D. 349. This emasculates the lien, for use in the immediate litigation may destroy the value of the papers to the client, and hence their security value to the solicitor. See *Davis* v. *Davis*, *supra*, at 792; *In re Faithfull*, *supra*, at 327; *Batten* v. *Wedgewood Co.*, 28 Ch. D. 317, 320.

On the other hand, the solicitor can have no greater right than his client could give him, and where the client could be made to produce papers on *subpœna duces tecum*, ordinarily the solicitor should be compelled to. *In re Cameron's Coalbrook, etc. R. Co.*, 25 Beav. 1; *Hope* v. *Liddell*, 7 De G., M. & G. 331; *Jackson* v. *American Cigar Box Co.*, 141 App. Div. 195, 126 N. Y. Supp. 58. See *Vale* v. *Oppert*, L. R. 10 Ch. 340, 342. But where the claim

of the solicitor is actually competing with the unsecured claims of third parties, as in bankruptcy proceedings, there seems no ground for depriving him of the advantage which his lien gives him. The tendency of some of the English cases to restrict the right to make the solicitor give up papers for use in litigation recognizes this. *In re Rapid Transit Co.*, [1909] 1 Ch. 96; *Boden* v. *Hensby*, [1892] 1 Ch. 101; *In re Capital Ins. Ass'n*, 24 Ch. D. 408.

RAILROADS — REGULATION OF RATES — POWER OF INTERSTATE COMMERCE COMMISSION OVER INTRASTATE RATES. — Section 15a of the Interstate Commerce Act, as amended by the Transportation Act of 1920, requires the Interstate Commerce Commission to prescribe rates so that the carriers as a whole or in groups shall earn an aggregate net income equal to a reasonable return on the aggregate value of their properties engaged in transportation. (41 STAT. AT L. 488.) Section 13 of the Act empowers the commission to fix intrastate rates when it finds such rates cause an undue discrimination against interstate commerce. (41 STAT. AT L. 484.) In conformity with the Act, the commission ordered increased passenger rates for the carriers in the group of which the Wisconsin carriers were a part. The Wisconsin Railroad Commission refused to grant this increased intrastate rate on the ground that a state statute prescribed a lower maximum. The Interstate Commerce Commission found that there was an undue discrimination against interstate commerce, and ordered the intrastate rates increased. The carriers filed a bill in equity to enjoin the state commission from interfering with this order. An interlocutory injunction was granted. The state commission appealed. *Held*, that the decree be affirmed. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company*, U. S. Sup. Ct., Oct. Term, 1921, No. 206.

For a discussion of the principles involved, see NOTES, *supra*, p. 864.

SALES — IMPLIED WARRANTIES — PLACE AT WHICH GOODS MUST BE SALABLE. — The plaintiffs bought mineral waters from the defendants f. o. b. London, for resale, as the defendants knew, in Argentine. There was no reliance on the seller's judgment. The goods were analyzed on their arrival in Argentine by the government and found to contain salicylic acid and, therefore, were unsalable under Argentine laws. The plaintiff sues for a breach of the seller's implied warranty of merchantability. *Held*, that the warranty of merchantability did not embrace legal salability. *Sumner, Permain & Co.* v. *Webb*, [1922] 1 K. B. 55.

Goods merchantable at one place may not be so at another. If the goods are merchantable at the place where they are when title is taken there is no breach of the warranty of merchantability. *Collins* v. *Tigner*, 5 Del. 345, 60 Atl. 978. *Cf. Perkins* v. *Whelan*, 116 Mass. 542. See WILLISTON, SALES, § 212. But if the goods are not merchantable at the place where title passes, though merchantable at the place the buyer contemplates using them, there has been a breach of the warranty, since merchantable goods have not been furnished, but goods that *would* be merchantable *if* somewhere else. Thus the seller's knowledge of contemplated use elsewhere is immaterial. If the buyer desires a warranty that the goods be merchantable at a place other than that where title is taken, he should not only make known to the seller that the goods are to be used at such other place, but he should rely upon the seller's judgment to furnish goods reasonably fit for such purpose. SALE OF GOODS ACT, 56 & 57 VICT., c. 71, § 14 (1); UNIFORM SALES ACT, § 15 (1). Any such reliance on the seller's judgment was negatived on the facts in the principal case and the only question, therefore, was whether the goods were merchantable in London where title passed. *Congdon* v. *Kendall*, 53 Neb. 282, 73 N. W. 659. See WILLISTON, *op. cit.*, § 280. Since no English drug law was violated, the discussion of whether or not legal salability is an element in merchantability seems